

STATE OF WYOMING) IN THE DISTRICT COURT
) ss.
COUNTY OF GOSHEN) EIGHTH JUDICIAL DISTRICT

STATE OF WYOMING, ex. rel. the)
WYOMING ATTORNEY GENERAL)
)
Plaintiff,) Civil Action No. _____
)
vs.)
)
HORSE CREEK CONSERVATION)
DISTRICT, a Wyoming Irrigation)
District; and PHASE 23, LLC,)
a Wyoming Limited Liability)
Company)
)
Defendants.)
)
)

STATE OF WYOMING’S COMPLAINT FOR DECLARATORY
JUDGMENT, INJUNCTIVE RELIEF AND BREACH OF CONTRACT

PLAINTIFF, the State of Wyoming, by and through the Wyoming Attorney General and pursuant to the Wyoming Uniform Declaratory Judgments Act (WYO. STAT. ANN. §§1-37-101 through 114), Rules 57 and 65 of the Wyoming Rules of Civil Procedure, and WYO. STAT. ANN. §§ 1-28-101, *et seq* alleges as follows:

JURISDICTION AND VENUE

1. Defendant Horse Creek Conservation District (“HCCD”) is a Wyoming irrigation district duly formed under WYO. STAT. §§ 41- 7-101, *et seq*.
2. Defendant Phase 23, LLC, is a limited liability company created under the laws of the State of Wyoming, and maintains its principal place of business in Goshen County, Wyoming.
3. This Court has jurisdiction over the subject matter of this action pursuant to WYO. CONST., art. 5, § 10, because the dispute concerns public access and real property interests. This Court also has jurisdiction pursuant to the Uniform Declaratory Judgments Act, WYO. STAT. ANN. §§1-37-102; 1-28-102 through 111; and Rules 57 and 65 of

W.R.C.P.

4. The real property in controversy is located in Goshen County, Wyoming. Venue is, therefore, proper under WYO. STAT. ANN. § 1-5-101.

FACTS COMMON TO ALL ALLEGATIONS

5. Hawk Springs Reservoir was constructed in the early 1900's on both private land and on land administered by the Board of Land Commissioners. The reservoir is located in portions of Sections 9, 10, 15, 16, 21, and 22 Township 20 North, Range 61 West, 6th P.M.

6. The HCCD owns portions of land at and around the reservoir, including the SE1/4 and the S1/2NE1/4 of Section 9; the SW1/4NW1/4, the SW1/4, and the NW1/4SE1/4 of Section 10; all of Section 15; and part of the N1/2NE1/4 of Section 21 lying east of the Union Pacific Railroad, all being in Township 20 North, Range 61 West, 6th P.M. (See Exhibit A, Deed from Lincoln Land Company to the HCCD, attached hereto)

7. In order to utilize the state lands in Section 16, including the portion of the reservoir located in that section, the HCCD received a Certificate of Right of Way and an easement from the Board of Land Commissioners.

8. In 1979, the main dam at Hawk Springs Reservoir was determined to be hydrologically inadequate. Consequently, the HCCD was unable to deliver sufficient water to its members, due in part, to the condition and age of the dam and other irrigation facilities at Hawk Springs Reservoir.

9. The HCCD subsequently determined that it needed to rehabilitate the reservoir and irrigation systems at Hawk Springs Reservoir.

10. The cost of the project was estimated to be approximately seven million dollars. Rather than pay for the project itself, the HCCD asked the State to fund the project.

11. In return for State funding, the HCCD agreed to grant the public recreational access in perpetuity to the Hawk Springs Reservoir and all adjacent lands owned by the HCCD for the purposes of hunting, fishing and general recreation.

12. In response, the 1983 session of the Wyoming Legislature passed legislation (WYO. STAT. ANN. §§ 41-2-216 through 41-2-218) authorizing the project.

The project consisted of repairing the main dam on Hawk Springs Reservoir, renovating the existing delivery system of the HCCD and creating a public recreation area at Hawk Springs Reservoir. (See Exhibit B, 1983 Wyo. Sess. Laws ch. 70, attached hereto)

13. As part of the legislation, the state gave the HCCD \$4,515,000 for the project. The state also provided a loan to HCCD in the amount of \$1,975,000 for a term of forty-five years at an annual interest rate of 6%. WYO. STAT. ANN. § 41-2-218(a).

14. The legislation also authorized the Wyoming Game and Fish Commission to expend not more than \$170,000 for necessary public facilities for the public recreation area at Hawk Springs Reservoir. WYO. STAT. ANN. § 41-2-218(a).

15. In exchange, the HCCD agreed to “grant public access in perpetuity to the Hawk Springs Reservoir proper and to all adjacent lands owned by the district or the state for the purposes of hunting, fishing and general recreation including the construction facilities as deemed necessary by the game and fish commission to maximize the public enjoyment.” WYO. STAT. ANN. § 41-2-218(b)(ii)(G).

16. On October 12, 1983, the HCCD filed with District Court of the Eighth Judicial District its “Commissioners Report and Petition for Assessment of Benefits and Authorization to Enter into Project Agreement.” In its Petition, the HCCD requested that the District Court confirm and approve the project and the proposed financing and asserted that the object and purpose of the project was to rehabilitate and upgrade its facilities and to create a public recreation area. (See Exhibit C, Commissioners Report and Petition for Assessment of Benefits and Authorization to Enter into Project Agreement, attached hereto)

17. In its Petition, the HCCD indicated that its members unanimously voted for its commissioners to enter into the project agreement. (See Exhibit C) The District Court confirmed and approved the HCCD’s Petition. (See Exhibit D, Order Approving and Confirming Commissioners Report and Petition for Assessment of Benefits and Authorization to Enter into Project Agreement, attached hereto)

18. On November 7, 1983, the HCCD and the state through the Department of Economic Planning and Development (“DEPAD”) entered into a project agreement as contemplated by WYO. STAT. ANN. § 41-2-218(b)(ii) and its Petition. As required by WYO. STAT. ANN. § 41-2-218(b)(ii), the State agreed that it would loan the HCCD up to \$1,975,000 and give the HCCD \$4,515,000 to engage in the repairs and improvements associated with the project. DEPAD was not authorized to release any of the funds until the HCCD signed the project agreement and agreed to grant public access in perpetuity to the Hawk Springs Reservoir proper and to all adjacent lands owned by the district or the state. (See Exhibit E, Project Agreement, attached hereto)

19. The agreement provided, that the HCCD “will not deny right of access to the general public, for recreational purposes, to Hawk Springs Reservoir and adjacent public lands designed for recreational use, after completion and acceptance of the reservoir and appurtenant works.”

20. On January 30, 1984, the HCCD executed a mortgage in the amount of \$1,975,000 indicating that the HCCD had received the state funds. The mortgage was subsequently recorded with the Goshen County Clerk on February 10, 1984. On July 5, 1993, the mortgage was amended to reflect that the interest rate associated with the loan had been reduced to 4% per annum. (See Exhibit F, Mortgages, attached hereto)

21. Consequently, the HCCD petitioned the State Board of Control to change the use of a portion of the water stored in Hawk Springs Reservoir from irrigation, stock and domestic to recreation. The State Board of Control’s Order granted the HCCD’s petition and provided that the HCCD requested that a portion of the water in Hawk Springs Reservoir be changed “from irrigation, stock and domestic use to recreational purposes to comply with the requirements of Chapter 70, Wyoming Session Laws 1983, (Section 41-2-218).” (See Exhibit G, State Board of Control’s Order, attached hereto)

22. The Order further provided that the HCCD “shall grant public access in perpetuity to the Hawk Springs Reservoir proper and to all adjacent lands owned by the district or the state for the purposes of hunting, fishing and general recreation including the construction of such facilities as deemed necessary by the Game & Fish Commission to maximize the public enjoyment.” The Order also provided that the “reason for this requested change is that the District has received a grant from the State of Wyoming for repairs to the dam and delivery system. To satisfy the grant it was required that the district assign ownership of 1779 acre-feet of water to the State of Wyoming, Department of Economic Planning & Development for recreational purposes.” On May 10, 1985, the State Board of Control Order dated November 18, 1984, was recorded with the Goshen County Clerk. (See Exhibit G)

23. During the 1985 legislative session, the State subsequently appropriated an additional \$2,041,000 to the HCCD to complete the project. The appropriation consisted of a \$1,815,000 grant and a \$226,000 loan repayable over a forty-five year period at 6% interest. (See Exhibit H, 1985 Wyo. Sess. Laws ch. 224, attached hereto)

24. On April 1, 1985, the HCCD and the state through the DEPAD entered into a second project agreement which superseded the November 7, 1983, project agreement. (See Exhibit I, Project Agreement, attached hereto) Prior to the HCCD executing this second project agreement, the HCCD once again requested that the District Court confirm and approve the project and the proposed financing. In its Petition, the HCCD

members acknowledged that they had received “good and valuable consideration” from the state, and as a result, authorized the HCCD, through its president of the board of commissioners, to enter into and execute the second project agreement. (See Exhibit J, Notice and Consent and Waiver, attached hereto) The second project agreement was approved by the District Court and has not been terminated. (See Exhibit K, Order Approving and Confirming Commissioners Report and Petition for Assessment for Benefits and Confirmation of Project Agreement, attached hereto)

25. The agreement specifically references WYO. STAT. ANN. §§ 41-2-216 through 41-2-218 and provides that in exchange for the grants and low interest loans, the HCCD “will not deny right of access to the general public, for recreational purposes, to Hawk Springs Reservoir and adjacent public lands designated for recreational use, after completion and acceptance of the reservoir and appurtenant works.”

26. The HCCD, on July 16, 1986, executed a second mortgage in the amount of \$226,000. The second mortgage was subsequently filed with the Goshen County Clerk on July 22, 1986. The second mortgage was subsequently amended on two separate occasions. The mortgage was first amended to reduce the principal amount from \$226,000 to \$195,197.03 and then was amended to reduce the interest rate to 4% per annum. (See Exhibit L, Second Mortgages, attached hereto)

27. In 1986, the Wyoming Legislature appropriated \$6,000 from the Game and Fish fund to the Wyoming Recreation Commission to be used for the maintenance of the public recreation facilities at the Hawk Springs Reservoir. (See Exhibit M, 1986 Wyo. Sess. Laws ch. 103, § 074, attached hereto)

28. The Legislature in 1988 appropriated \$110,000 to the Wyoming Recreation Commission for “expansion and improvement of Hawk Springs Recreation Area.” (See Exhibit N, 1988 Wyo. Sess. Laws ch. 52 § 074, attached hereto)

29. Beginning in 1985, the State of Wyoming, through various agency action has built and maintained, among other improvements, a boat ramp, improved fish habitat and picnic and campground sites, at the Hawk Springs Recreational Area. (See Exhibit O, Affidavits of William M. Westerfield and _____, attached hereto)

30. Pursuant to WYO. STAT. ANN. § 36-4-121, the Department of State Parks and Cultural Resources offers to the public daily use and overnight camping permits for Hawk Springs Recreational Area.

31. Since 1985, the public has enjoyed public access to the Hawk Springs Recreational Area. (See Exhibit O)

32. The Hawk Springs Recreational Area has and still provides quality recreation experiences for thousands of Wyoming citizens each year. (See Exhibit O)

33. In 2005, traffic counters recorded over 11,000 visitations to Hawk Springs Recreational Area as citizens sought to take advantage of the excellent fishing, boating, camping and bird-watching. The majority of those visitations occur between May through October. (See Exhibit O)

34. Over the past several months, the HCCD and Phase 23, LLC, a limited liability company formed on June 12, 2006, have structured a real estate transfer to deprive the public of the perpetual access they were granted in 1983.

35. Ron and Dorothy Buchhammer are the listed members of Phase 23, LLC. (See Exhibit P, Articles of Organization of Phase 23, LLC, attached hereto)

36. Ron Buchhammer is employed by the HCCD as its superintendent/manager and has been so during the past several years.

37. On September 13, 2006, the HCCD sold 40 acres of HCCD property to Phase 23, LLC, pursuant to a contract for deed. (See Exhibit Q, Notice of Execution of Contract for Deed, attached hereto)

38. The contract for deed indicates that the 40 acres of land comprising the SW1/4 SE1/4, Section 9, Township 20 North, Range 61 East, 6th P.M., Goshen County, Wyoming was sold for \$300 per acre for a total sales prices of \$12,000.

39. The 40 acres sold to Phase 23, LLC are part of the Hawk Springs Recreational Area in which the HCCD has granted public access in perpetuity.

40. The 40 acres contain many improvements built by the Wyoming Game and Fish Department and the Department of State Parks and Cultural Resources including a boat ramp, picnic areas and various campground sites. Further, the property sold contains the Department of State Parks and Cultural Resources fee cannister used by users to pay the permit fee. (See Exhibit O)

41. The contract for deed required that Phase 23, LLC pay a down payment of \$300 which was made on or about September 13.

42. The contract further provides that the remaining \$11,700 balance is to be paid in annual installments with an interest rate of 4.45% per annum for fifteen years. However, the contract does not require any payments be made for the first year.

43. At the end of fifteen years, if Phase 23, LLC has not defaulted on its payments, the HCCD will convey to Phase 23, LLC, marketable title in the form of a warranty deed.

44. If Phase 23, LLC, defaults on the contract during the first three years, the HCCD will repay all monies paid by Phase 23, LLC, in relation to the contract.

45. The contract acknowledges that the property is encumbered by a mortgage granted to the State of Wyoming and requires HCCD to remove the State of Wyoming

mortgage at the time Phase 23, LLC, makes its last payment.

46. In the contract, the HCCD agrees to indemnify and hold harmless Phase 23, LLC, including its members and shareholders from any and all claims, demands and causes of action brought by any person or government agency, including but not limited to the State of Wyoming in any way connected to the sale and or purchase of the forty acres.

47. The contract requires that HCCD pay all costs, including attorney fees incurred in drafting and recording the contract.

48. The contract for deed was executed by Lon Eisenbarth, president of the HCCD and by Ron Buchhammer, on behalf of Phase 23, LLC.

49. Both Lon Eisenbarth and Ron Buchhammer had actual knowledge of the perpetual public access granted by HCCD to the State of Wyoming via WYO. STAT. ANN. §§ 41-2-216, *et seq.* at the time the contract for deed was executed.

50. Curtis Buchhammer is the attorney for both the HCCD and Phase 23, LLC. Both the HCCD and Ron Buchhammer executed waivers of conflict of interest acknowledging that Curtis Buchhammer was conflicted in providing advice to both HCCD and Phase 23, LLC, with regard to this transaction.

51. On or about September 24, 2006, employees of Phase 23, LLC, and/or the HCCD placed a locked barbed wire gate across the only road providing public access to Hawk Springs Recreational Area.

52. A State Parks employee on or about September 20 noticed a person digging post holes at the location where the barbed wire locked gate currently denies public access to the Recreation Area. State Parks law enforcement personnel checked the license plate on the person's truck and the truck was registered to the HCCD.

53. This gate is chained and padlocked and completely prevents the public's access to Hawk Springs Recreational Area. Signs on the barbed wire gate advise the public to "Keep Out" and that to go further on the road they would be entering private property where no trespassing is allowed. (See Exhibit O, photos of locked gate, attached hereto)

54. Although Phase 23, LCC and/or the HCCD has denied the public's access to the Recreational Area, both the HCCD and its members, including Ron Buchhammer, signed a consent and waiver in 1985 acknowledging they had received good and valuable consideration from the State, and as a result, authorized the HCCD to enter into and execute the second project agreement providing that the HCCD would not deny public access to the Hawk Springs Recreational Area. (See Exhibit J)

55. Subsequently, on September 26, 2006, the Department of State Parks and

Cultural Resources and the Wyoming Game and Fish Department received a letter from Curtis Buchhammer notifying those state agencies that HCCD had sold certain identified property to Phase 23, LLC, and that “to the extent the public was using any portion of the described property to access the reservoir, or using any of the described property for public recreational purposes, those activities must be terminated.” (See Exhibit R, Letter from Curt Buchhammer, attached hereto)

56. The HCCD and Phase 23, LLC have and continue to deny the public access to lands that HCCD granted public access in perpetuity.

57. The public has been and continues to be denied access to enjoy and use Hawk Springs Recreational Area, including the fishing, hunting, boating and camping.

58. The Department of State Parks and Cultural Resources and the Wyoming Game and Fish Department reasonably believe that citizens will still attempt to access the Hawk Springs Recreational Area resulting in altercations between members or employees of the HCCD and/or Phase 23, LLC, and the public which could require the assistance of the Goshen County Sheriff’s Office.

59. On September 27, 2006, the Department of State Parks and Cultural Resources received a phone call from a Wyoming citizen indicating that he was planning on cutting the barbed-wire fence to gain access into Hawk Springs Recreational Area so he could fish his favorite fishing hole. While the Department of State Parks encouraged the gentleman to not cut the barbed-wire fence and to not attempt to gain access, the Department cannot ensure that citizens will not attempt to gain access to the Recreational Area that they are entitled to use via Wyoming State law. (See Exhibit O)

60. On September 25, 2006, Lon Eisenbarth, president of the HCCD, advised an employee with the Game and Fish Department, that the HCCD was denying the public access to Hawk Springs Recreational Area as a bargaining chip to get the Wyoming Legislature to forgive certain debt with regard to the Hawk Springs project. (See Exhibit O)

FIRST CAUSE OF ACTION – DECLARATORY JUDGMENT

61. Plaintiff re-alleges and adopts by reference paragraphs 1 through 60 of this Complaint.

62. Defendants have constructed a fence blocking public access to Hawk Springs Reservoir through SW1/4 SE1/4, Section 9, Township 20 North, Range 61 East, 6th P.M., Goshen County.

63. Defendant HCCD allowed the placement of the fence, via a contract for deed conveyance to a private party in violation of its agreement with the State of

Wyoming and in violation of WYO. STAT. ANN. § 41-2-218 (b)(ii)(G).

64. Defendant Phase 23, LLC, took the property subject to an open and notorious grant of public access to Hawk Springs Reservoir required by WYO. STAT. ANN. § 41-2-218(b)(ii)(G), and given by Defendant HCCD in the 1982 and 1983 PROJECT AGREEMENTS.

65. Defendants have constructed a chained and padlocked gate across the public recreational access located on Section 9 beginning on September 13, 2006, through the present in direct violation of Wyoming statutes and binding contracts executed with the State.

66. There is a justiciable controversy between the Plaintiff and the Defendants regarding public access to the public recreational facilities established by WYO. STAT. ANN. § 41-2-217(a)(iii) and 218(b)(ii)(G).

67. Pursuant to the Wyoming Declaratory Judgments Act, WYO. STAT. ANN. §§1-37-101 through 114, Plaintiff is entitled to an entry of judgment declaring the public's right of perpetual access to Hawk Springs Reservoir, all adjacent lands owned by HCCD, Phase 23, LCC, and any of their successors, assigns, or subsequent purchasers, pursuant to WYO. STAT. ANN. §§ 41-2-216, *et seq.* and bindings agreements executed between HCCD and the State of Wyoming.

**SECOND CAUSE OF ACTION—PRELIMINARY
AND PERMANENT INJUNCTION**

68. Plaintiff re-alleges and adopts by reference paragraphs 1 through 67 of this Complaint.

69. Pursuant to WYO. STAT. ANN. §§ 1-28-101 through 111, the Plaintiffs bring this civil action to permanently enjoin Defendants or their successors or assigns from blocking public access to Hawk Springs Reservoir and all adjacent lands owned by the Defendants or the Plaintiffs.

70. Plaintiffs have a statutory right under WYO. STAT. ANN. §§ 41-2-218(b)(ii)(G) and a contractual right under the binding project agreement to unfettered public access for recreational purposes to Hawk Springs Reservoir and all adjacent lands owned by the Defendants, and any of their successors, assigns, or subsequent purchasers.

71. Plaintiff will suffer great and irreparable injury should Defendants continue to refuse public recreational access to Hawk Springs Reservoir, and the adjacent lands

owned by HCCD, and the public lands adjacent thereto.

72. There is potential for civil unrest due to Defendants' conduct in blocking access to a public hunting and fishing area which has been open to the public since at least 1985, particularly in the month of October which is the open hunting season for wildlife in Wyoming, and open season for fishing on this reservoir.

73. Should even one citizen of Wyoming be denied access to a public recreational area where the citizen has a statutory right to access, irreparable damage occurs, as no amount of money damages will be able to compensate the citizen's loss of enjoyment in Wyoming wildlife. Monetary damages will be difficult, if not impossible to calculate and will not compensate the public for the lost intangible benefits of having the ability to access this area for outdoor recreation.

74. Given the unjust conduct of Defendants set forth in this complaint, it is likely that Plaintiffs will succeed on the merits of its claim. Therefore, Defendants will not be harmed by this Court granting Plaintiff a preliminary or permanent injunction.

75. The grant of the injunction will return the parties and the public to the status quo prior to the Defendants' illegal acts.

THIRD CAUSE OF ACTION– BREACH OF CONTRACT

76. Plaintiff re-alleges and adopts by reference paragraphs 1 through 75 of this Complaint.

77. The State of Wyoming and HCCD entered into binding project agreements pursuant to WYO. STAT. ANN. §§ 41-2-216 *et seq.*

78. These contracts, dated November 7, 1983, and April 1, 1985, both of which specifically reference WYO. STAT. ANN. §§ 41-2-216 through 218, provide that:

It is further agreed that THE DISTRICT [HCCD] will not deny right of access to the general public, for recreational purposes, to Hawk Springs Reservoir and adjacent public land designated for recreational use, after completion and acceptance of the reservoir and appurtenant works.

(Emphasis in original), Exhibits E & I.

79. The reservoir and appurtenant works were completed and accepted by the HCCD.

80. Defendant HCCD has breached the binding contracts when it structured a real estate transaction to deprive the public of the perpetual public access they were

granted with regard to Hawk Springs State Recreation Area in 1983.

PRAYER FOR RELIEF

PLAINTIFF prays for the following relief:

1. This Court enter judgment in favor of Plaintiff and order Defendants to specifically perform the statutorily mandated agreement they have with Plaintiffs by allowing unfettered access to Hawk Springs Reservoir...To wit:

The district shall grant public access in perpetuity to the Hawk Springs Reservoir proper and to all adjacent lands owned by the district or the state for the purposes of hunting, fishing and general recreation including the construction of such facilities as hunting, fishing and general recreation including the construction of such facilities as deemed necessary by the game and fish commission to maximize the public enjoyment...

WYO. STAT. ANN. § 41-2-218(b)(ii)(G).

2. A temporary restraining order, preliminary injunction, and permanent injunction prohibiting Defendants from preventing public access in perpetuity to the Hawk Springs Reservoir, public lands associated therewith, and to all adjacent lands owned by the Defendants or their successors or assigns.

3. A declaration that the Defendants must provide access to Hawk Springs Reservoir and to all adjacent lands owned by the district, or their successors or assigns, or the state and that a valid and legally enforceable grant of public access exists.

4. A declaration that Defendants must execute and record a public right-of-way easement pursuant to WYO. STAT. ANN. § 41-2-218 (b)(ii)(G).

5. All other and further relief that this Court deems just and proper.

DATED this _____ day of October, 2006.

Patrick J. Crank

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